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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,384	12/19/2001	Gerald James Keberlein	KCX-472 (17476)	5212

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10/14/2004

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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,384

Applicant(s)

KEBERLEIN, GERALD JAMES

Examiner

Khoan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,10-17,19-33 and 36-38 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,2,4, 5, 8, 10-17, 19-33 and 36-38 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06/28/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Drawings

The proposed drawings correction and/or the proposed substitute sheets of drawings, filed on June 28, 2004 have been approved. However, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the first and second side walls are canted towards each other" in claims 8, 12, 25, and 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 12, 13, 14, 22, 23, 25, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 13, 14, 22, and 23, it is not known whether a combination or subcombination is being claimed because the sheet material is first inferred as an intended use and then positively claimed as a part of the device. For this Office action only, the sheet material of napkin is considered as an intended used with the carton device. With respect to claims 8, 12, 25, and 30, these claims are incomplete and/or misdescriptive because there is no reciting structure(s) to enable the recited functions to be accomplished thus the scope of the claims are unascertainable.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 10, 11, 19, 21, 22, 31-33, and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Peng (U.S. Patent No. 5,884,767). Peng

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discloses a carton tray that meets all limitations of the claims. For example, the carton tray of Peng comprising a one piece blank foldable into a carton tray, see Figures 1 and 2. The tray has a bottom wall panel (12) with first and second edges (14), a first sidewall is attached to the first edge and a second sidewall is attached to the second edge, the first sidewall (15, 17, 19, and 24) comprises a first outer sidewall (15) and a first inner sidewall (24), the first inner sidewall (24) being folded over and placed upon the first outer sidewall (15) such that a surface of the first outer sidewall lies adjacent to and is in contact with an opposing surface of the first inner sidewall, see Figure 3, the first outer sidewall being secured to the first inner sidewall between the opposing surfaces; a first flap (19) extending from the first inner sidewall (23) over at least a portion of the bottom panel and a first arch (18) located on the first inner sidewall having a perforation line.

Claims 1, 2, 5, 10, 11, 19, 21, 22, 31-33, and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane (U.S. Patent No. 4,230,258). Lane discloses a carton tray that meets all limitations of the claims. For example, the carton tray of Lane comprising a one piece blank foldable into a carton tray, see Figures 1 and 2. The tray has a bottom wall panel (3) with first and second edges (2) and an access notches (14), a first sidewall is attached to the first edge and a second sidewall is attached to the second edge, the first sidewall (4, 5, 11) comprises a first outer sidewall (4) and a first inner sidewall (11), the first inner sidewall (11) being folded over and placed upon the first outer sidewall (4) such that a surface of the first outer sidewall (4) lies adjacent to and is in contact with an opposing surface (19) of the first inner sidewall,

see Figure 2, the first outer sidewall being secured to the first inner sidewall between the opposing surfaces; a first flap (12) extending from the first inner sidewall (11) over at least a portion of the bottom panel and a first arch (17) located on the first inner sidewall having a perforation line.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peng (U.S. Patent No. 5,884,767) as applied to claims 1, 2, 5, 10, 11, 19, 21, 22, 31-33, and 36-38 above, and further in view of Gambardella et al. (U.S. Patent No. 5,901,843). Gambardella et al. teach an adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Peng with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together because it is well-within the level of skill in the art to utilize the known feature of the art for the purpose for which it is known.

Claims 4, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (U.S. Patent No. 4,230,258) as applied to claims 1, 2, 5, 10, 11, 19, 21, 22, 31-33, and 36-38 above, and further in view of Gambardella et al. (U.S. Patent No.

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5,901,843). Gambardella et al. teach an adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together because it is well-within the level of skill in the art to utilize the known feature of the art for the purpose for which it is known.

Claims 8 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane as applied to claims 1, 2, 5, 10, 11, 19, 21, 22, 31-33, and 36-38 above, and further in view of R. B. Meller (U. S. Patent No. 2,331,038). Meller teaches first and second sidewalls (9) are in a relaxed position and in a tensioned position upon an item is inserted therebetween the tray. See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize a flexible blank material to construct a tray therewith as taught Meller in order to enable the tray to automatically lock and hold the individual item of merchandise against accidental displacement or removal. With respect to claim 15, it would have been an obvious matter of choice of design at the time of the invention to provide sidewalls with decorative motif for aesthetic purpose thus producing no new matter and unexpected results.

Claims 23-27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller as applied to claims 1, 2, 5, 8, 10-16, 19, 21, 22, 31-33, and 36-38 above, and further in view of Allan H. Miller (U.S. Patent No. 4,275,811). Miller teaches a removable outer protective wrap (26) that configured to

encase and surround a tray. See Figures 1, and 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the tray of Lane in view of R. B. Meller with a protective wrap enclosing the tray as taught by Miller in order to keep the item that is supported on the tray from nature contamination.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of R. B. Meller and Allan H. Miller as applied to claims 1, 2, 5, 8, 10-16, 19, 21-27, 29, 30-33, and 36-38 above, and further in view of Gambardella et al. Gambardella et al. teach an adhesive (58) on the blank carton. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the carton of Lane in view of R. B. Meller and Allan H. Miller with the provision of adhesive as taught by Gambardella et al. in order to glue two walls together because it is well-within the level of skill in the art to utilize the known feature of the art for the purpose for which it is known.

Response to Amendment

With respect to applicant's remarks filed on June 28, 2004, it should be noted that as broadly as the claims recite, they read on the tray of Lane (U.S. Patent No. 4,230,258). It should be noted, as advanced above, Figure 2 of Lane illustrates a first outer sidewall (4) and a first inner sidewall (11), the first inner sidewall (11) being folded over and placed upon the first outer sidewall (4) such that a surface of the first outer sidewall (4) lies adjacent to and is in contact with an opposing surface (19) of the first inner sidewall.

Any comments considered necessarily by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun, can be reached on (703) 308-2156. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa Tran

October 02, 2004



LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER